



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

March 31, 2023

BY ECF

The Honorable Vernon S. Broderick
United States District Judge
Southern District of New York
United States Courthouse
40 Foley Square, Courtroom 518
New York, New York 10007

Re: *United States v. Sayfullo Habibullaevic Saipov*, S1 17 Cr. 722 (VSB)

Dear Judge Broderick:

The Government writes in brief response to the defendant's letter of March 21, 2023 (Dkt. No. 779), seeking to vacate the Court's Orders of February 3, 14, 23, and 24, 2023 (*See* Dkt. No. 750). The Government continues to agree that the Court has the authority to direct the defendant to provide the information requested, and that the information is relevant. The Government does not, however, object to the defense providing the information under seal and *ex parte*, provided the information is preserved for the record.

First, the information requested by the Court is relevant to pending and future litigation in this case. The Court, for example, indicated that it intends to issue a written decision explaining the Court's denial of the defendant's motion for a trial adjournment and evidentiary hearing based on alleged *Brady* violations by the Government. The information presently requested by the Court is relevant to that motion in light of the defense's argument that the defendant would be prejudiced by proceeding to trial as scheduled because the defense could not review the Government's disclosures and also prepare for trial. (Dkt. No. 525, at 18-19). The defense made similar arguments in connection with other motions made throughout the pendency of this case relating to both phases of the trial.¹ While the defense has represented that current counsel does not intend to file any post-trial motions or appeal any issue relating to the penalty phase, that representation is not binding on the defendant (or any subsequent counsel), and, in any event, the information

¹ *See, e.g.*, Dkt. No. 475, at 3-4 (arguing that receipt of penalty phase informative outline two weeks before *voir dire* would violate the defendant's Fifth, Sixth, and Eighth Amendment rights because, among other reasons, counsel would be fully occupied with *voir dire* and evidentiary hearings); Dkt. No. 619, at 4-5 (arguing that the defendant was prejudiced by the timing of the Government's identification of four witnesses based, in part, on the necessary devotion of resources to brief-writing, reviewing the Government's "belated *Brady* disclosures," and participating in individual *voir dire*).

² The Government further notes that the Court permitted the defense to delay production of the requested information after confirming that the defense would not argue that the delay to a date following the sentencing verdict would moot the Court's inquiry. (Trial Tr. at 3192).